

Appl. No. 10/779,308
Amdt. Dated 01/13/05
Reply to Office Action of 10/13/04

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application. The examiner has rejected claims 1-12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,884,271 to Pitroda in view of the U.S. Patent No. 5,767,896 to Nemirofsky. In order to establish a prima facie case of obviousness under 35 U.S.C. § 103 (a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

Applicant's claims 5, 9, and 12 specifically require the housing to include pivotally connected first and second sections for allowing a user to access data stored in the card. Pitroda fails to disclose such a structural arrangement because it employs one section rather than a pair of pivotally connected sections, as claimed by the present invention (See Pitroda col. 9, lines 49-63). Pitroda teaches away from the claimed invention because it is intended to be used in a manner similar to a credit card, driver's license, or ATM card, wherein a magnetic strip may be passed along an electronic reader at point-of-sale (POS) reader (See Pitroda col. 2, lines 27-40). If Pitroda had pivotally connected first and second members, as required by applicant's claimed invention, the intended function of swiping Pitroda's UET card would be defeated (See Pitroda col. 10, lines 4-25).

Applicant respectfully submits the UET card of Pitroda does not disclose the capability to communicate directly with a third party or vendor using a wireless modem connected to the microprocessor, as recited in applicant's claims 2, 6 and 10. Pitroda discloses the capability of its UET card to communicate via a radio frequency based wireless system, however such communication must occur between the UET card 20 and the CIU 21 (communication interface unit) not directly with a third party's or vendor's computer (See Pitroda FIG. 2 and col. 10, lines 4-25). Therefore, applicant submits Pitroda does not teach all of applicant's claims.

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Applicant further submits the UET card of Pitroda does not disclose a sound generating device connected to the microprocessor for alerting a user of unauthorized attempts to access the card, as recited in applicant's claims 3, 7, and 10. Pitroda discloses a speaker/beeper (See Pitroda FIG. 1, item 16, FIG. 3, item 37) that activates a reminder signal or an audible alarm when the battery is low. Although Pitroda discloses the capability of preventing unauthorized access (col. 14, lines 7-18), it does not disclose the ability to alert a user of unauthorized attempts to access the card. Therefore, applicant submits Pitroda does not teach all of applicant's claims.

The examiner acknowledges Pitroda does not disclose the display of a unique bar code associated with the selected program for accessing data corresponding to the selected program, as recited by applicant's independent claims 1, 6, and 10. However, the examiner asserts it would have been obvious to one having ordinary skill in the art to combine the bar code display capability of Nemirofsky with the UET card of Pitroda to teach applicant's invention. The smart card of Nemirofsky displays the bar code of stored redeemable coupons (See Nemirofsky col. 11, lines 15-51, col. 14, lines 49-67, and col. 15, lines 1-2), not a bar code unique to the card, as recited in applicant's claims. Therefore, any hypothetical combination of Nemirofsky with the other prior art of record would not teach applicant's claimed invention.

Applicant further submits the UET card of Pitroda includes a database including a 32 bit non-erasable unique number assigned to each UET card for security (See Pitroda FIG. 4, item 401, and col. 11, lines 58-62). As a result, there is no suggestion or motivation in Pitroda to display a unique bar code because a vendor does not communicate with the UET card directly, but rather a vendor communicates with the CIU (See Pitroda FIG. 2), which communicates the unique number for each UET card to the vendor. That a prior art reference could be modified to form the claimed structure does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

Should the examiner find applicant's arguments unpersuasive, applicant


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proposes modifying each independent claim to include the following: (means for entering a user access code unique to a selected program such that the user may initialize the selected program). Alternately, applicant proposes modifying each independent claim to include: (means for storing user data within said memory such that said card will be switched to an inoperable mode after a predetermined number of unauthorized attempts to access said card have been executed). Such proposed claim modifications do not introduce new subject matter nor do they raise new issues for consideration because they merely restate the currently claimed functions of the present invention in means-plus-function language.

In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable with respect to the above arguments. Should the examiner consider necessary or desirable to make formal changes anywhere in the specification, claims and/or drawings, then it is respectfully asked that such changes be made by examiner's Amendment, if the examiner feels this would facilitate passage of the case to issuance. Alternatively, should the examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned attorney.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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